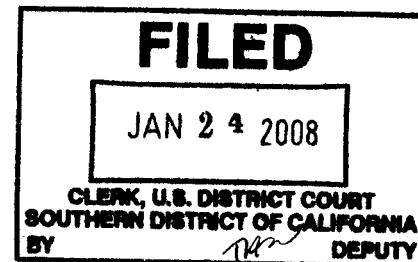


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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

17 UNITED STATES OF AMERICA, ) Magistrate Case No. 08MJ8010  
 18 Plaintiff, )  
 19 v. )  
 20 XAVIER HUMBERTO LOPEZ-BORREGO, ) **STIPULATION OF FACT AND JOINT  
MOTION FOR RELEASE OF  
MATERIAL WITNESS(ES) AND  
ORDER THEREON**  
 21 Defendant. )  
 22 \_\_\_\_\_) (Pre-Indictment Fast-Track Program)

23 IT IS HEREBY STIPULATED AND AGREED between the plaintiff, UNITED STATES  
 24 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and  
 25 Caroline P. Han, Assistant United States Attorney, and defendant XAVIER HUMBERTO LOPEZ-  
 26 BORREGO, by and through and with the advice and consent of defense counsel, Frank M. Murphy,  
 27 that:

28 1. Defendant agrees to execute this stipulation on or before the first preliminary hearing  
 29 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,  
 30 intelligently and voluntarily entered into it. Defendant agrees further to indictment and plead guilty  
 31 to the pre-indictment information charging defendant with a non-mandatory minimum count of  
 32 Harboring Illegal Aliens and Aiding and Abetting, in violation of Title 8, U.S.C., Secs. 1324(a)(1)(A)(iii)  
 33 and (v)(II) (Felony)

29 //

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1       2.    Defendant acknowledges receipt of a plea agreement in this case and agrees to  
 2 provide the signed, original plea agreement to the Government not later than five business days  
 3 before the disposition date set by the Court.

4       3.    Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or  
 5 before **February 8, 2008**.

6       4.    The material witness, Salvador Pineda-Ramirez, in this case:

7           a.    Is an alien with no lawful right to enter or remain in the United States;  
 8           b.    Entered or attempted to enter the United States illegally on or about  
 9 January 7, 2008;

10           c.    Was found in a house which defendant was the caretaker and that defendant  
 11 knew or acted in reckless disregard of the fact that he was alien with no lawful right to enter or remain  
 12 in the United States;

13           d.    Was paying \$2,500 to others to be brought into the United States illegally  
 14 and/or transported illegally to his destination therein; and,

15           e.    May be released and remanded immediately to the Department of Homeland  
 16 Security for return to his country of origin.

17       5.    After the material witnesses are ordered released by the Court pursuant to this  
 18 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any  
 19 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,  
 20 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

21           a.    The stipulated facts set forth in paragraph 4 above shall be admitted as  
 22 substantive evidence;

23           b.    The United States may elicit hearsay testimony from arresting agents  
 24 regarding any statements made by the material witness(es) provided in discovery, and such testimony  
 25 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest  
 26 of (an) unavailable witness(es); and,

27           c.    Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),

28       Stipulation of Fact and Joint Motion for Release of  
 Material Witness(es) And Order Thereon in  
 United States v. Xavier Humberto Lopez-Borrego

1 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted  
2 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant  
3 waives the right to confront and cross-examine the material witness(es) in this case.

4 6. By signing this stipulation and joint motion, defendant certifies that defendant has  
5 read it (or that it has been read to defendant in defendant's native language). Defendant certifies  
6 further that defendant has discussed the terms of this stipulation and joint motion with defense  
7 counsel and fully understands its meaning and effect.

8 Based on the foregoing, the parties jointly move the stipulation into evidence and for the  
9 immediate release and remand of the above-named material witness(es) to the Department of  
10 Homeland Security for return to his country of origin.

11 It is STIPULATED AND AGREED this date.

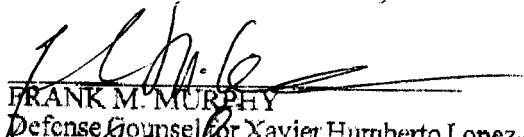
12 Respectfully submitted,

13 KAREN P. HEWITT  
14 United States Attorney

15 Dated: 1/24/08

16   
CAROLINE P. HAN  
17 Assistant United States Attorney

18 Dated: 1/21/08

19   
FRANK M. MURPHY  
20 Defense Counsel for Xavier Humberto Lopez-Borrego

21 Dated: 1/21/08

22   
XAVIER HUMBERTO LOPEZ-BORREGO  
23 Defendant

## ORDER

Upon joint application and motion of the parties, and for good cause shown,

**THE STIPULATION** is admitted into evidence, and

**IT IS ORDERED** that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to his country of origin.

**SO ORDERED.**

Dated: 1-24-08

United States Magistrate Judge

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**Stipulation of Fact and Joint Motion for Release of  
Material Witness(es) And Order Thereon in  
United States v. Xavier Humberto Lopez-Borrego**